

REMARKS

Claims 1-25 are currently pending. Claim 1 is currently amended without prejudice. Claims 11-25 are new. Applicants thank Examiner for his indication of allowable subject matter in claims 2, 3, 5, and 7. No new matter has been added.

Independent claim 1 has been amended without prejudice to more particularly point out that “the combination of the maximum height of the selected top end cap and the selected bottom end cap is greater than 15% of the maximum height of the selected central body.” Support for this amendment is found, *inter alia*, on page 17 of the specification as-filed.

Independent claim 11 is new, and represents claim 2 rewritten in independent form.

Independent claim 20 is new, and represents claim 5 rewritten in independent form.

Independent claim 25 is new, and more particularly points out that the central body may be “substantially without apertures.”

No new matter has been added by these amendments.

Objections to the Drawings

FIG. 1A was objected to as being misdescriptive. Applicants respectfully submit that FIG. 1A does indeed show converging planes 13, 15, and that this objection should be withdrawn. As shown in FIG. 1A, dashed lines indicating planes 13, 15 extend beyond the horizontal plane lines 16, 20 of faces 12, 14, respectively. Applicants submit that this distinction is apparent at the location of the angle arrows for θ_1 , thereby describing a divergent relationship between planes 13, 15 and their respective horizontal planes 16, 20.

Applicants also respectfully note that FIG. 1A was amended to its current form to satisfactorily respond to an identical objection in the parent case of the instant application, Serial No. 09/814,215 (now U.S. Patent No. 6,660,038).

Objections to the Specification

The continuing data section was objected to for incorrectly describing the instant application as a continuation application. This section has been amended without prejudice to describe the instant application as a divisional application.

The abstract was objected to for reciting the phrase “The present invention relates.” The abstract has been amended to remove this phrase.

Rejections under § 102(e)

Claims 1, 4, 6, and 8 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,086,613 to Camino et al. (“Camino”). Claim 1 states that “the combination of the maximum height of the selected top end cap and the selected bottom end cap is greater than 15% of the maximum height of the selected central body.” Camino does not disclose this relationship between the end caps and the central body. To the contrary, the end caps 10, 11, 210, 310, 410, 510, 610, 710, and 810 described in Camino have maximum heights significantly less than the maximum height of spacer 12. Moreover, the end caps described in Camino, when engaging the spacer 12, sit almost entirely within spacer 12, as seen, for example, in Figs. 6, 7, 11, and 12 in Camino. Thus, Camino fails to disclose each and every element of claim 1, and therefore Applicants respectfully submit that this rejection should be withdrawn. As claims 4, 6, and 8 dependent from claim 1, Applicants respectfully submit that these rejections should similarly be withdrawn.

Rejections under § 103(a)

Claims 9 and 10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Camino. As demonstrated above, Camino does not disclose each and every element of claim 1, upon which claims 9 and 10 depend. Therefore, Applicants respectfully submit that these rejections should be withdrawn.

New Claims

New independent claim 11 is claim 2, previously indicated by the Examiner to contain allowable subject matter, rewritten in independent form. New dependent claims 12-19 depend from claim 11, and therefore it is respectfully submitted that new claims 11-19 are in condition for allowance.

New independent claim 20 is claim 5, previously indicated by the Examiner to contain allowable subject matter, rewritten in independent form. New dependent claims 21-24 depend from claim 20, and therefore it is respectfully submitted that new claims 20-24 are in condition for allowance.

New independent claim 25 recites the limitation, *inter alia*, that “the central body is substantially without apertures.” Support for claim 25 is found, *inter alia*, in Figs. 1A, 3A-3D, 4B-5A, 6F-6G, 10A-10D, and 10G of the specification as-filed. Applicants respectfully submit that Camino does not teach, suggest, or disclose an implant having a

central body "substantially without apertures." On the contrary, Camino only describes a spacer having an patterned array of apertures to form a mesh-like surface. Thus, it is respectfully submitted that new claim 25 is allowable over the prior art of record.

CONCLUSION

In view of the above amendments and remarks, it is believed that claims 1-25 are in condition for allowance.

A one-month extension fee in the amount of \$120 is believed due for this Response, in addition to additional claim fees estimated to be \$450. Please charge this estimate fee of \$570, and any other fee that may be required, to Jones Day deposit account no. 503013.

Respectfully submitted,

Date: June 2, 2005


Brent P. Ray
For: Brian Rothery
(Reg. No. 35,340)

54,390
(Reg. No.)

JONES DAY
222 East 41st Street
New York, New York 10017
(212) 326-3939